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4 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
5 AT SEATTLE

6 WILLIAM ERIC ARNETTE,

7 Plaintiff,

8 v.

9 STATE OF WASHINGTON, et al.,

10 Defendants.

Case No. C17-451 JLR-BAT

**REPORT AND  
RECOMMENDATION**

11 William Eric Arnette, who is currently incarcerated at the Washington Corrections  
12 Center, filed a civil rights complaint against the State of Washington and King County. Dkt. 6.  
13 The Court declined to serve the complaint because Mr. Arnette failed to name a proper  
14 defendant, his claims against the state public defender and state governmental entities were  
15 subject to dismissal, and his challenge to his state criminal proceedings is barred by the *Heck*  
16 doctrine. Dkt. 7.

17 Mr. Arnette was granted leave to file an amended complaint to cure the noted  
18 deficiencies. *Id.* Mr. Arnette filed an amended complaint (Dkt. 8), however, it suffers from the  
19 same deficiencies already noted by the Court. Dkt. 8, p. 3. Accordingly, the undersigned  
20 recommends that the Court dismiss the complaint without prejudice.

21 **PLAINTIFF'S ALLEGATIONS**

22 Mr. Arnette alleges that his assigned counsel, the wife of a judge who previously  
23 wrongfully convicted him of a juvenile offense, provided ineffective assistance of counsel in Mr.

Arnette's King County Superior Court criminal case. Mr. Arnette also claims that his right to a speedy trial was violated. Dkt. 8. Mr. Arnette seeks an investigation and a cash settlement. *Id.*

## **DISCUSSION**

To sustain a civil rights action under § 1983, a plaintiff must show (1) he suffered a violation of rights protected by the Constitution or created by federal statute, and (2) the violation was proximately caused by a person acting under color of state or federal law. *See Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991).

### **A. Criminal Plea/Conviction**

Mr. Arnette seeks relief in this § 1983 action for conduct that led to his conviction. Mr. Arnette was previously advised that, to recover damages for an alleged unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994).

Mr. Arnette does not allege that his conviction has been invalidated and thus, any claims relating to his criminal conviction are not yet cognizable § 1983 claims and they should be dismissed.

### **B. Public Defender, King County Department for Accused, State of Washington**

Mr. Arnette has also failed to name proper parties to his complaint. A state public defender performing traditional lawyer functions is not a state actor. *Polk County v. Dodson*, 454 U.S. 312, 324-25 (1981); *Miranda v. Clark County*, 319 F.3d 465, 468 (9<sup>th</sup> Cir. 2002). In

1 addition, a governmental entity such as the King County Department for the Accused is not a  
2 proper party to a § 1983 complaint. *See Howlett v. Rose*, 496 U.S. 356, 365 (1990).  
3 Additionally, Mr. Arnette does not allege a claim against King County, which is a municipality  
4 that can be sued under § 1983 because he does not allege how the County's employees or agents  
5 acted through an official custom, pattern or policy that permits deliberate indifference to, or  
6 violates, his civil rights or that the County ratified the unlawful conduct. *Monell v. New York*  
7 *City Dept. of Social Services*, 436 U.S. 658, 690-91 (1978).

8 Finally, neither a state nor its officials acting in their official capacities are "persons"  
9 within the meaning of § 1983. *Will v. Michigan Department of State Police*, 491 U.S. 58, 71  
10 (1989). States and state agencies are immune from suit in federal court under the Eleventh  
11 Amendment unless a state expressly waives its constitutional immunity. *Alden v. Maine*, 527  
12 U.S. 706 (1999). The State of Washington has not waived its Eleventh Amendment immunity.  
13 *Whiteside v. State of Washington*, 534 F.Supp. 774 (E.D. Wash. 1982). Therefore, the State of  
14 Washington cannot be named as a defendant.

## 15 CONCLUSION

16 Mr. Arnette was granted leave to file an amended complaint to cure the deficiencies of  
17 his original complaint. His amended complaint suffers from similar deficiencies and it is clear  
18 that Mr. Arnette cannot allege facts entitling him to relief under 42 U.S.C. § 1983. Accordingly,  
19 the Court recommends that this action be **DISMISSED without prejudice for failure to state a**  
20 **claim.** A proposed order accompanies this Report and Recommendation. Any objections to this  
21 Recommendation must be filed by **Thursday, June 8, 2017**. The Clerk should note the matter  
22 for **Monday, June 12, 2017** as ready for the District Judge's consideration if no objection is  
23 filed.

1 If plaintiff files an objection, he must note the matter for the Court's consideration 14  
2 days from the date the objection is filed and served. Objections shall not exceed seven (7) pages.  
3 The failure to timely object may affect the right to appeal.

4 DATED this 18th day of May, 2017.

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6 BRIAN A. TSUCHIDA  
7 United States Magistrate Judge  
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